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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,715	12/20/2000	Robert H. Montgomery JR.	K-1775	7766

7590

07/28/2004

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EXAMINER

SINGH, SUNIL

ART UNIT PAPER NUMBER

3673

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/742,715

Applicant(s)

MONTGOMERY

Examiner

Sunil Singh

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6,8,9,13,14,22 and 24-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9,13,14,22 and 24 is/are allowed.
- 6) ☒ Claim(s) 6,8 and 25-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 25, 27, 30-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Beebe (US 4844550).

Beebe discloses a cutter tool assembly comprising a bit holder block (see Figs. 3, 8) having a cavity bore, a non-rotatable (see col. 3) partially split wear sleeve including a forward portion, intermediate portion and a split portion, the intermediate portion and split portion having external surfaces of substantially uniform diameter (see attached marked up Figure 4).

With regards to claim 31, the further defining of the "cavity bore" does not further limit claim 30 since it was never positively recited.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, 8, 26, 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill (US 5302005) in view of Beebe '550.

O'Neill discloses a cutter tool assembly comprising a bit holder block having a cavity bore wherein said cavity bore is a stepped bore (see Fig. 7) having a forward portion (143) with a larger diameter than a smaller diameter (149) rearward portion, a non-rotatable wear sleeve (see abstract), said sleeve is adapted to be received by the bit holder block. There is a tapered surface (145) between the larger bore (143) and the smaller bore (149). O'Neill discloses the invention substantially as claimed. However, O'Neill lacks a sleeve with a partial split wherein the intermediate portion and the split portion are uniform in diameter. Beebe teaches a friction fit sleeve wherein the partial split and intermediate portions are uniform in diameters (see above discussion). It would have been considered obvious to one of ordinary skill in the art to modify O'Neill by substituting the sleeve as taught by Beebe for the sleeve disclosed by O'Neill since such an arrangement facilitates the insertion of the sleeve within the bit block holder.

#### **Allowable Subject Matter**

5. Claims 9,13,14, 22 and 24 are allowed.

#### ***Response to Arguments***

Applicant's arguments filed 7/6/2004 have been fully considered but they are not persuasive. Applicant argues that the intermediate portion of the Beebe reference '550 is not substantially uniformed. The examiner disagrees. The examiner would like to direct applicant to examiner's marked up Figure 4 of the Beebe '550 reference wherein the examiner is considering the upper portion of

the cylindrical member as the intermediate portion since there is **nothing in the claim precluding the interpretation of the intermediate portion also including a split.**

With regards to applicant's argument of the combination of O'Neill in view of Beebe '550, applicant argues that there is no motivation to provide a split in the sleeve of O'Neill since it was a thicker dimension sleeve and relied on it's static dimensions to form the interference fit. Applicant should note that the examiner never suggested for the sleeve of the O'Neill reference to be cut to include a split; instead the examiner stated it would have been considered obvious to one of ordinary skill in the art to modify O'Neill by **substituting** the sleeve as taught by Beebe for the sleeve disclosed by O'Neill since such an arrangement facilitates the insertion of the sleeve within the bit block holder.

### ***Conclusion***

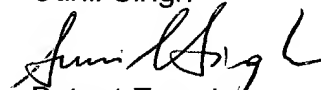
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (703) 308-4024. The examiner can normally be reached on Monday through Friday 8:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3673

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh



Patent Examiner  
Art Unit 3673

SS

SS

7/22/04

